

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Seaford Avenue Corp.,

Plaintiff,

-against-

ION Insurance Company, Inc.,

Defendant.

Case No.: 2:22-cv-03449

**ANSWER AND AFFIRMATIVE
DEFENSES**

JURY TRIAL DEMAND

Defendant ION Insurance Company, Inc. (“Defendant”), through their attorneys Moritt Hock & Hamroff LLP, asserts for its Answer and Affirmative Defenses to the Complaint of Plaintiff Seaford Avenue Corp. (“Plaintiff”), dated June 10, 2022 (the “Complaint”), the following:

JURISDICTION

1. Defendant denies the allegations in Paragraph 1 of the Complaint.

VENUE

2. Defendant denies the allegations in Paragraph 2 of the Complaint.

PARTIES

3. Defendant denies knowledge of information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 3 of the Complaint.
4. Defendant admits the allegations in Paragraph 4 of the Complaint
5. Defendant admits the allegations in Paragraph 5 of the Complaint

FACTS

6. Defendant denies knowledge of information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 6 of the Complaint. Nevertheless, if a response is required, Defendant denies the allegations contained in Paragraph 6 of the Complaint.

7. Defendant denies the allegations contained in Paragraph 7 of the Complaint, and respectfully refers the Court to the contents of the written agreement between the Housing Trust Fund Corporation and DRG Construction, LLC, referenced in Paragraph 7 of the Complaint (the “Prime Contract”).

8. Defendant denies the allegations contained in Paragraph 8 of the Complaint, and respectfully refers the Court to the contents of the Prime Contract and the “Bond” referenced in Paragraph 8.

9. Defendant denies the allegations contained in Paragraph 9 of the Complaint.

10. Defendant denies the allegations contained in Paragraph 10 of the Complaint.

11. Defendant denies the allegations contained in Paragraph 11 of the Complaint.

COUNT ONE
(Breach of the Bond against Defendant)

12. Defendant repeats and realleges its answers to Paragraphs 1 through 11 of the Complaint as if fully set forth herein.

13. Paragraph 13 of the Complaint asserts a legal opinion which is improper and does not require a response from Defendant. Nevertheless, if a response is necessary, then Defendant denies the allegations contained in Paragraph 13 of the Complaint.

14. Defendant denies the allegations contained in Paragraph 14 of the Complaint.

15. Defendant denies the allegations contained in Paragraph 15 of the Complaint.

16. Defendant denies the allegations contained in Paragraph 16 of the Complaint.

17. Defendant denies the allegations contained in Paragraph 17 of the Complaint.

18. Paragraph 18 of the Complaint asserts a legal opinion which is improper and does not require a response from Defendant. Nevertheless, if a response is necessary, then Defendant denies the allegations contained in Paragraph 18 of the Complaint.

19. Defendant denies the allegations contained in Paragraph 19 of the Complaint.

COUNT TWO
(Attorneys' Fees against Defendant)

20. Defendant repeats and realleges its answers to Paragraphs 1 through 19 of the Complaint as if fully set forth herein.

21. Defendant denies the allegations contained in Paragraph 21 of the Complaint.

22. Paragraph 22 of the Complaint asserts a legal opinion which is improper and does not require a response from Defendant. Nevertheless, if a response is necessary, then Defendant denies the allegations contained in Paragraph 22 of the Complaint.

23. Defendant denies the allegations contained in Paragraph 23 of the Complaint.

WHEREFORE, Defendant respectfully requests that Plaintiff take nothing by this action; that judgment be entered in favor of Defendant and against Plaintiff on all Causes of Action; that Defendant be awarded their costs and/or attorneys' fees herein incurred pursuant to applicable law should they prevail in this lawsuit; and that the Court award Defendant such other and further relief as it deems proper.

AFFIRMATIVE DEFENSES

1. The Complaint should be dismissed because Plaintiff has failed to state a claim upon which relief can be granted.

2. The Complaint should be dismissed based upon Plaintiff's unclean hands.

3. The Complaint should be dismissed based upon lack of privity.

4. The Complaint t should be dismissed based upon the fact that the Court lacks subject matter jurisdiction.

5. The Complaint should be dismissed based upon Plaintiff's failure to name or include all necessary parties and/or Plaintiff sued the improper party.

6. The Complaint should be dismissed on the grounds that Plaintiff did not suffer any damages as a result of the conduct alleged.

7. The Complaint should be dismissed based upon the failure of a condition precedent.

8. The Complaint should be dismissed based upon the failure of Plaintiff to obtain necessary approvals and/or authorizations from the appropriate parties, including but not limited from the applicable state and local government agencies, entities and/or bodies.

9. Plaintiff is not entitled to attorney's fees.

10. The Complaint should be dismissed to prevent the unjust enrichment of Plaintiff.

11. The Complaint is barred, in whole or in part, by documentary evidence.

12. The Complaint should be dismissed, in whole or in part, based upon the doctrines of waiver, estoppel, consent and/or ratification.

13. The Complaint should be dismissed as a result of the breaches, failures and/or inability to perform and/or the actions, conduct and/or omissions of Plaintiff.

14. The Complaint should be dismissed on the grounds that Plaintiff failed to mitigate its alleged damages.

15. The Complaint should be dismissed on the grounds that any alleged conduct by Defendant was not the cause in fact or proximate cause of any injury or damages alleged by Plaintiff.

16. The Complaint should be dismissed on the grounds that Plaintiff failed to comply with the procedural and/or substantive requirements of New York state statutes, including, but not limited to, New York State Finance Law and/or New York Mechanics Lien Law.

17. Defendant reserves the right to raise additional defenses and/or other supplemental defenses asserted in this Answer, whether such additional defenses arise under federal law, state law, by statute, inequity or at common law.

JURY DEMAND

Defendant hereby demands a trial by jury of all issues triable by a jury.

Dated: New York, New York
November 4, 2022

Respectfully submitted,

MORITT HOCK & HAMROFF LLP

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